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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/642,865	08/21/2000	Jesse Darley	P0663/7022	8105

7590 05/22/2002

Randy J Pritzker
Wolf Greenfield & Sacks PC
600 Atlantic Avenue
Boston, MA 02210

EXAMINER

VO, HIEN XUAN

ART UNIT

PAPER NUMBER

2863

DATE MAILED: 05/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/642,865

Applicant(s)

DARLEY, JESSE

Examiner

Hien X. Vo

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,8-11,13-15,17,19,20,28,29 and 37-66 is/are rejected.
- 7) ☒ Claim(s) 3-7,12,16,18,21-27 and 30-36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Notice to Applicant(s)

1. This application has been examined. Claims 1-66 are pending.
2. The prior art submitted on 03/15/2002 has been considered as indicated on the enclosed copies of Form PTO-1449.

Drawings

3. The drawings are objected to under 37 CFR § 1.84 for the reasons set forth by the draftsman. See attached PTO-948 form for details. Correction is required.

Direct any inquires concerning drawing review to the Drawing Review Branch (703) 305-8404.

Specification

On page 1 of the specification, applicant is required to update the current status of the parent applications serial No. 09/547,975, 09/547,977 and 09/548,217. Correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 8-11, 13-15, 17, 19-20, 28-29, 37-66 are rejected under 35 U.S.C. § **102(b)** as being anticipate by Flentov et al. (US No. 5,636,146).

With respect to claims 1-2, 8-11, 13-15, and 17, Flentov discloses an apparatus and methods for determining loft time and speed including at least one processor (see e.g. col. 1, lines 65-67), a device supported by a user while user is in locomotion on foot and determining a foot contact time of the user in locomotion (see e.g. col.1, lines 60-65), comparing a variable having the at least one determined foot contact time as a factor therein with a threshold value (see e.g. col. 4, lines 1-24), determining the user is walking or running by compare the variable with a threshold value (see e.g. col. 4, lines 25-37), calculating a speed and a pace of the user if the user is walking

or running (see e.g. col. 4, lines 24-37).

With respect to claims 19-20, 28-29, 37, and 38 Flentov discloses the invention as claimed including an amount of force exerted by at least one foot of the user on the surface during at least one footstep taken by the user (see e.g. claim 12).

With respect to claims 33-36, Flentov discloses the invention as claimed including a processor to analyze an output of the sensor and calculate the amount of force exerted by the foot on the surface (see e.g. Figs. 14-14A), an accelerometer (see e.g. col. 2, lines 60-67).

With respect to claims 39-40, Flentov discloses the invention as claimed including at least one sensor does not required compression forces to monitor movement of the user and analyzing an output of the sensor to determine a step time of the user (see e.g. col.1, lines 62-67).

With respect to claims 41-51, the limitations of these claims have been noted in the rejection above. They are therefore consider rejected as set forth above.

Claims 52-66 are apparatus claims corresponding to method claims 1-2, 8-11, 13-15, 17, 19-20, 28-29, 37-51. Therefore, claims 52-66 are rejected for the same rationales set forth for claims 1-2, 8-11, 13-15, 17, 19-20, 28-29, 37-51.

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Allowable Subject Matter

Claims 3-7, 12, 16, 18, 21-27, 30-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Hien Vo, whose telephone number is (703)308-5253. The examiner can normally be reached on Monday-Friday from 9:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hilten, can be reached on (703)308-0719.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

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(703) 308-7382 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Plaza 4, Arlington. VA.,
Fourth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.



JOHN S. HILTEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

HIEN VO
May 16, 2002